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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re J.A., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. J.A., Defendant and Appellant.	G046947 (Super. Ct. No. DL040423) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Deborah J. Chuang, Judge. Affirmed.

Gerald J. Miller, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Melissa Mandel and Charles C. Ragland, Deputy Attorneys General, for Plaintiff and Respondent.

The People's petition under Welfare and Institutions Code section 602 alleged minor Joel A. committed attempted first degree residential burglary with the intent to commit larceny.[1] (Pen. Code, §§ 664, subd. (a), 459, 460, subd. (a).) The court found minor came within the description of section 602 and found beyond a reasonable doubt he committed attempted first degree burglary. The court committed minor to juvenile hall for 120 days to be served concurrently with his 90-day commitment for a prior probation violation.

Minor contends no substantial evidence supports the court's finding he intended to commit a felony on the victim's property. We disagree and affirm.

FACTS

One afternoon, Beatrice Pacheco, who had moved into her house one and a half months earlier, saw two males (including minor) jump over her fence and enter her backyard. Minor was dark complected, had sharp facial features and short hair, and wore a black t-shirt, black pants, and black shoes with white trim. His companion was about the same height and weight, had short hair, and wore a t-shirt, regular jeans, and white shoes.

Pacheco called her husband. She then phoned 911.

Inside the backyard, minor and his friend peered over the six-foot-tall cinder block wall that separated Pacheco's yard from her neighbor's house. Minor peered into the yards of Pacheco's neighbors on both sides. He and his companion then approached Pacheco's windows. Pacheco did not see minor "exactly look into [her] home."

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[1] All statutory references are to the Welfare and Institutions Code unless otherwise stated.

Pacheco heard a door knob jiggle. It was the knob on the side door connecting the backyard to her living room. Pacheco told the 911 dispatcher she heard her door knob jiggle.

At some point, Pacheco heard conversation between minor and his companion. She saw them standing together behind her detached garage in the backyard. Minor was in Pacheco's backyard for a total of about four to five minutes. After that, Pacheco did not see them anywhere.

The police arrived at Pacheco's home around two minutes after she got off the phone with the 911 dispatcher. The police searched Pacheco's backyard, then took her in the patrol car to identify minor and his companion at a nearby location. Pacheco recognized minor immediately.

Nothing was missing from Pacheco's backyard. The only thing present in the backyard that could have been stolen was her husband's sandals.

Defense

Minor testified on his own behalf. He and his friend, Juan, had been taking a short cut from a church and were "heading somewhere," "planning to go get some girls." The girl's name was Clarissa. Minor and Juan "knew the shortcut already," although Juan did not know Clarissa yet. Juan showed minor the shortcut. The prosecutor asked minor how Juan could know the shortcut if Juan did not know Clarissa. Minor replied, "I don't know the shortcut, you know, like, I don't know, I don't know the shortcut."

Juan said the house looked abandoned so minor and Juan were "chilling there," i.e., "kicking back" or "hanging out" in the backyard. They looked in the neighbor's backyard at some dogs. Minor was trying to recognize what type of dogs the puppies were. Then they "looked into the other side of [Pacheco's] window and . . . saw like something like a flash or something," in other words, "a light." They went to the

window "to check it out, and as soon as [they] went [they] saw somebody right there," "a person sitting down." Minor "panicked and just ran out. [They] just jumped the fence and left." Minor explained that he was in Pacheco's backyard for 10 minutes because of the dogs.

DISCUSSION

Minor contends no substantial evidence supports the court's finding he intended to commit a felony on Pacheco's property. He asserts the evidence at most supported a finding of criminal trespass. The Attorney General argues the evidence was sufficient to show minor committed attempted first degree residential burglary under either direct or aiding and abetting theories of liability.

Under section 602, subdivision (a), a person under age 18 who commits a crime may be adjudged a ward of the juvenile court. But a minor may be adjudged a ward under section 602 only upon "[p]roof beyond a reasonable doubt supported by evidence, legally admissible in the trial of criminal cases." (§ 701.)

"'"The standard of proof in juvenile proceedings involving criminal acts is the same as the standard in adult criminal trials. [Citation.]"' [Citations.] In reviewing the sufficiency of the evidence, the appellate court 'must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence — that is, evidence which is reasonable, credible, and of solid value — such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.' [Citation.] 'To warrant rejection of a witness' testimony that has been believed by the trier of fact, there must exist either a physical impossibility that it is true, or its falsity must be apparent without resorting to inferences or deductions. [Citation.] Conflicts and even testimony subject to justifiable suspicion do not justify a reversal, for it is the exclusive province of the trier of fact to determine the credibility of a witness.'" (*In re*

Cheri T. (1999) 70 Cal.App.4th 1400, 1404.) We must determine whether any rational trier of fact could find, based on the evidence viewed most favorably to the prosecution, the elements of the crime beyond a reasonable doubt. (*People v. Jennings* (2010) 50 Cal.4th 616, 638-639.) "We presume in support of the judgment the existence of every fact the jury reasonably could deduce from the evidence." (*Ibid.*) "The standard of review is the same when the prosecution relies mainly on circumstantial evidence." (*People v. Valdez* (2004) 32 Cal.4th 73, 104.)

A person who enters an inhabited house "with intent to commit grand or petit larceny or any felony" is guilty of first degree burglary. (Pen. Code, §§ 459, 460, subd. (a).) The purpose of the burglary statute is to protect the burglarized structure's occupants. """"Burglary laws are based primarily upon a recognition of the dangers to personal safety created by the usual burglary situation — the danger that the intruder will harm the occupants in attempting to perpetrate the intended crime or to escape and the danger that the occupants will in anger or panic react violently to the invasion, thereby inviting more violence. The laws are primarily designed, then, not to deter the trespass and the intended crime, which are prohibited by other laws, so much as to forestall the germination of a situation dangerous to personal safety.' Section 459, in short, is aimed at the danger caused by the unauthorized entry itself."""" (*Magness v. Superior Court* (2012) 54 Cal.4th 270, 275.)

"Although the prosecution must demonstrate that one accused of burglary entered the premises with intent to commit theft or any felony, intent is rarely susceptible of direct proof and may be inferred from the circumstances disclosed by the evidence. [Citations.] Where the facts and circumstances of a particular case and the conduct of the defendant reasonably indicate his purpose in entering the premises is to commit larceny or any felony, the conviction may not be disturbed on appeal." (*People v. Nunley* (1985) 168 Cal.App.3d 225, 232.)

The law punishes persons who attempt to commit a crime, but fail. (Pen. Code, § 664.) "An attempt to commit a crime consists of two elements: a specific intent to commit the crime, and a direct but ineffectual act done toward its commission." (Pen. Code, § 21a.) "'Commission of an element of the underlying crime other than formation of intent to do it is not necessary. [Citation.] Although mere preparation such as planning or mere intention to commit a crime is insufficient to constitute an attempt, acts which indicate a certain, unambiguous intent to commit that specific crime, and, in themselves, are an immediate step in the present execution of the criminal design will be sufficient.'" (*People v. Jones* (1999) 75 Cal.App.4th 616, 627.)

A person commits a crime "whether they directly commit the act constituting the offense, or aid and abet in its commission." (Pen. Code, § 31.) "An aider and abettor . . . must 'act with knowledge of the criminal purpose of the perpetrator *and* with an intent or purpose either of committing, or of encouraging or facilitating commission of, the offense.'" (*People v. Mendoza* (1998) 18 Cal.4th 1114, 1123.)

Evidence of nonconsensual entry, flight from the scene, and failure to provide a plausible reason for being on the premises constitute sufficient evidence from which a finder of fact may infer an intent to commit theft sufficient for conviction of burglary. (*People v. Martin* (1969) 275 Cal.App.2d 334, 339.) Indeed, as has been often stated, "'[b]urglarious intent can reasonably be inferred from an unlawful entry alone.'" (*Ibid.*, quoting *People v. Jordan* (1962) 204 Cal.App.2d 782, 786; *People v. Stewart* (1952) 113 Cal.App.2d 687, 691, citing *People v. Fitch* (1946) 73 Cal.App.2d 825, 927; *People v. Hinson* (1969) 269 Cal.App.2d 573, 578; *People v. Wolfe* (1967) 257 Cal.App.2d at p. 425.) As for attempted burglary, in *People v. Gilbert* (1927) 86 Cal.App. 8, 9, there was substantial evidence of attempted burglary where the defendant climbed over a balcony, approached the bedroom doors, dropped from the balcony to escape when the occupants became aroused, and was arrested in the vicinity soon thereafter. And, in *People v. Machen* (1935) 3 Cal.App.2d 499, 500, evidence of the

defendant's unauthorized presence on the premises and his hands raised up against a window screen at the time of his arrest, along with evidence another window screen had been tampered with, was sufficient to prove attempted burglary, even though the defendant's proffered excuse, if believed by the court, might have been a good defense.

Here, minor and Juan surreptitiously jumped the fence to enter Pacheco's backyard. They looked behind her detached garage. Someone jiggled the knob of a door leading into Pacheco's house. The court could have reasonably inferred that the person who jiggled the door knob was either minor or Juan, since they were the only people seen in the backyard. Even if Juan, rather than minor, jiggled the door knob, the evidence that minor and his friend arrived in concert, acted together, communicated with each other, moved around the premises together, and fled simultaneously supported an inference that minor knew of Juan's intent and aided and abetted him. Minor and Juan approached a window. They fled when they saw someone inside the house. This evidence supported an inference that minor committed attempted burglary.

Minor's arguments to the contrary were credibility issues for the court to resolve. Substantial evidence supports the court's finding minor had the requisite specific intent to commit theft upon entering the residence.

Minor relies on *In re Leanna W.* (2004) 120 Cal.App.4th 735 and *People v. Hill* (1946) 77 Cal.App.2d 287. These cases are inapposite. *Leanna W.* involved a juvenile who hosted a party at her grandmother's home while her grandmother was away. (*Leanna W.*, at p. 737.) "The juvenile court found true the allegations of burglary and vandalism, citing the fact that 'utilities were used,' and alcohol was consumed in her presence. However, the court found the allegation of grand theft not true on the ground that it was not proven beyond a reasonable doubt that Leanna, as opposed to another person at the house at the time, had stolen the property from the home." (*Id.* at p. 738.) The juvenile court stated it had a reasonable doubt as to what the juvenile herself actually did while in the house. (*Id.* at p. 740.) The Court of Appeal found the evidence was

insufficient to support the juvenile court's findings of burglary and vandalism (*id.* at p. 738) based on the "critical deficiency [of] the lack of evidence of what [the juvenile herself] did while she was in her grandmother's home (*id.* at p. 740). Here, in contrast, there was evidence of what minor himself did in Pacheco's backyard and circumstantial evidence that if he did not personally jiggle the door knob, he aided and abetted Juan.

In *Hill*, the appellate court held no substantial evidence supported the defendant's robbery conviction. (*People v. Hill*, *supra*, 77 Cal.App.2d at p. 288.) With scant discussion of how the evidence in the case was deficient to show the defendant aided and abetted the principals (e.g., the opinion fails to identify the deficiency in the evidence that the defendant drove the get-away car and, when stopped by the police, slid a gun down across his lap, then denied all knowledge of the gun) (*id*. at p. 288-289), *Hill* merely explained that an accused's mere presence at the scene of the crime, as opposed to evidence he acted as a look-out, "does not necessarily establish his guilt as an abettor" (*id.* at p. 294). *Hill* is no precedent for reversing the order in this case.

DISPOSITION

The judgment is affirmed.

IKOLA, J.

WE CONCUR:

ARONSON, ACTING P. J.

FYBEL, J.